

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELLIOTT CARTER,

Petitioner,

– *against* –

CHRISTOPHER MILLER,

Respondent.

ORDER

21-cv-2680 (ER)

RAMOS, D.J.:

Elliot Carter, proceeding *pro se*, brought a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 on March 26, 2021, challenging his conviction of first-degree rape in the Supreme Court of the State of New York. Doc. 1. The Court referred the case to Magistrate Judge Robert W. Lehrburger on May 28, 2021. Doc. 5. Thereafter, the state filed a response in opposition to the petition on September 24, 2021. Doc. 13; Doc. 14. Carter replied on October 29, 2021. Doc. 16; Doc. 17.

On May 2, 2022, Magistrate Judge Robert W. Lehrburger issued a Report and Recommendation (“R & R”), recommending that Carter’s petition be denied. Doc. 19. The R & R made clear that the parties had fourteen days to file written objections to the Report. *Id.* at 27. Carter did not file any objections; rather, on August 15, 2022, he filed a motion for the appointment of counsel. Doc. 20. The following day, the Court denied Carter’s request. Doc. 21. The Clerk of Court mailed Carter a copy of the Court’s Order denying his request. *See* Min. Entry dated Aug. 17, 2022.

Thereafter on December 19, 2022, the Court issued a short order providing Carter with a final opportunity to submit any objections to the R & R by Monday, January 23, 2023. Doc. 23. The Court made clear that failure to do so would result in a waiver of objections

and would preclude appellate review. *Id.* The Clerk of Court mailed Carter a copy of the Court's Order. Min. Entry dated Dec. 20, 2022. No objections were filed.

I. STANDARD OF REVIEW

A district court reviewing a magistrate judge's report and recommendation "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). Parties may raise "specific," "written" objections to the report and recommendation "[w]ithin fourteen days after being served with a copy." *Id.*; *see also* Fed. R. Civ. P. 72(b)(2).

A district court reviews *de novo* those portions of the report and recommendation to which timely and specific objections are made. 28 U.S.C. § 636(b)(1)(C); *see also United States v. Male Juvenile (95-CR-1074)*, 121 F.3d 34, 38 (2d Cir. 1997). The district court may adopt those parts of the report and recommendation to which no party has timely objected, provided no clear error is apparent from the face of the record. *Lewis v. Zon*, 573 F. Supp. 2d 804, 811 (S.D.N.Y. 2008).

II. DISCUSSION

Notwithstanding that no objections were filed, the Court reviewed Magistrate Judge Lehrburger's thorough and well-reasoned Report and finds no error, clear or otherwise. The Court therefore adopts Magistrate Judge Lehrburger's recommendation.

For the reasons set forth above, Carter's petition for habeas corpus is DENIED. The Clerk of the Court is respectfully directed to terminate the petition, Doc. 1, and to close the case. It is SO ORDERED.

Dated: March 7, 2023
New York, New York



Edgardo Ramos, U.S.D.J.